

Amendment and Response Under 37 C.F.R. §1.116
Serial No.: 09/888,943
Confirmation No.: 9282
Filed: 25 June 2001
For: RESPIRATOR VALVE

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Remarks

The Office Action mailed 27 July 2007 has been received and reviewed. Claims 27, 28, and 49 have been amended, claims 1-26 and 48 are canceled (without prejudice), and new claims 51-71 are presented. Upon entry of these amendments, claims 27-47 and 49-71 will be pending in the present application. Reconsideration and withdrawal of the rejections are respectfully requested.

Information Disclosure Statements

Applicants have not received initialed copies of the PTO-1449 forms submitted with Information Disclosure Statements submitted on October 2, 2001, February 10, 2003, and April 12, 2004.

Copies of the PTO-1449 forms (as retrieved on PAIR) are attached for the convenience of the Examiner. In addition, these forms indicate actual receipt by the Office on the dates indicated (October 9, 2001, February 20, 2003, and April 12, 2004). Further, Applicants note that the Foreign Patent Documents listed on these forms are also available on PAIR to evidence their receipt by the Office.

Applicants respectfully request that initialed copies of these forms be returned to Applicants to ensure that the references listed thereon have been considered.

New Claims 51-71

New claims 51-71 are presented to provide Applicants with more comprehensive protection of the inventions disclosed in the application. Support for the new claims can be found in the application as filed at, e.g., page 2, lines 28-31; page 4, lines 6-23; page 6, lines 1-25; page 11, lines 1-15; and Figures 2-4. Entry and consideration of new claims 51-71 are respectfully requested.

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Double Patenting Rejections

Claims 15-18, 28, 38, and 48-50 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-16 and 26 of U.S. Patent No. 6,883,518. Claims 15, 17-20, and 23-27 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-10, 12, and 18 of U.S. Patent No. 6,883,518 in view of Braun (U.S. Patent No. 4,934,362).

Applicants note that claims 15-26 and 48 are canceled in this response, thereby rendering the rejections moot as applied to any of these canceled claims. In the event these rejections are maintained and upon an indication of otherwise allowable subject matter, Applicants will provide appropriate responses.

The 35 U.S.C. §102 Rejection

Claims 15, 17-32, 34-42, and 44-50 were rejected under 35 U.S.C. §102(b) as being anticipated by Lübeck (German Patent No. 1,213,249). Applicants respectfully disagree.

Applicants have canceled claims 15, 17-26, and 48 (without prejudice), rendering this rejection moot with respect to those claims. As to claims 27-32, 34-42, 44-47, 49, and 50, Applicants have the following remarks.

Independent claim 28 recites a respirator that includes a unidirectional valve, where the unidirectional valve includes, *inter alia*, a valve flap having a curvature from the first end to the second end when the valve flap is not attached to the valve body, and further wherein at least a portion of the curvature of the valve flap is at least partially flattened when the valve flap seals the valve opening.

Independent claim 38 recites a respirator including, *inter alia*, a unidirectional valve that includes a valve flap including a curvature from a first end to a second end when the valve flap is not attached to the face mask, wherein the curvature of the valve flap is at least partially flattened when the valve flap seals the opening in the face mask.

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Lübeck does not teach valves with valve flaps as recited in independent claims 28 and 38 (i.e., a valve flap having a curvature from a first end to a second end when not attached to the valve body or the face mask). Lübeck, instead, teaches only valve flaps that have a flat shape. See Lübeck, Figures 1, 5-7.

In response to these arguments, it is asserted in the Office Action that Figures 3 and 6 of Lübeck, in particular, show the claimed curvature in the valve flap. Although the flap of Lübeck is curved in Figures 3 and 6, it must be recognized that the valve flap is being forced open in both of those figures. As a result, any characterization of Figures 3 and 6 of Lübeck as depicting a valve flap that has curvature even when it is not attached to another structure is wrong.

As support for Applicants' position that Figures 3 and 6 of Lübeck show open valve flaps, please note the following sentence found in the third paragraph after the figure descriptions on page 3 of the Lübeck Translation: "As shown in Fig. 3 and 6, the bridge 3 of rib 2 bends sideways for an opened valve." In other words, the valve flaps that are depicted in Figures 3 and 6 of Lübeck have been deflected into the curved shape by air pressure to open the valve in which they are located. Applicants' position that the valve flaps disclosed by Lübeck do not meet the recitations of claims 28 and 38 is further reinforced with reference to Figure 5 of Lübeck, where the valve flap is depicted alone (i.e., unattached to any structure) and has no curvature.

In addition to the above arguments with respect to independent claims 28 and 38, Applicants have the following comments with respect to the various dependent claims also rejected as anticipated in view of Lübeck.

With respect to dependent claim 49 (which depends from claim 28), Applicants note that the reasoning provided in support of the rejection of claim 49 does not address how Lübeck teaches that "the valve flap is attached to the valve body outside of the valve opening." In particular, Applicants note that the cross-sectional views of Figures 1 and 3 of Lübeck clearly show that the valve flap is connected to a support 9 using a pin 7 that is well within the bounds of the valve opening.

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With respect to dependent claims 31 and 40, Applicants note that the last paragraph of page 1 of Lübeck (assumed to refer to the last paragraph on page 1 of the Lübeck Translation) does not describe a valve flap with a constant curvature from a first end to a second end as recited in claims 31 and 40. In addition, Applicants submit that the cited portion of Lübeck actually describes a conventional button style valve, not the valves that are described as forming a part of the Lübeck invention.

With respect to dependent claims 32 and 41, Applicants note that the last paragraph of page 1 of Lübeck Translation does not describe a valve flap with a curvature that varies from a first end to a second end as recited in claims 32 and 41. Again, Applicants submit that the cited portion of Lübeck actually describes a conventional button style valve, not the valves that are described as forming a part of the Lübeck invention.

With respect to dependent claims 36, 37, 46, and 47, Applicants note that the last paragraph of page 1 of Lübeck Translation does not describe a valve flap with one or more support elements that provide the curvature in the valve flaps of Lübeck as recited in claims 36, 37, 46, and 47. Again, Applicants submit that the cited portion of Lübeck actually describes a conventional button style valve, not the valves that are described as forming a part of the Lübeck invention.

As discussed above, Lübeck does not explicitly teach a variety of features that are recited in claims 27-32, 34-42, 44-47, 49, and 50. Although not clearly asserted, if it is the Examiner's intention to rely on the theory of inherent anticipation, i.e., that Lübeck inherently teaches the combination of features recited in claims 27-32, 34-42, 44-47, 49, and 50, then Applicants respectfully submit that the requirements for such a rejection have not been met.

"The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." MPEP § 2112(IV), p. 2100-47, 8th Ed., Rev. 6, (Sept. 2007) (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (emphasis in original). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the

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determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Id.* at p. 2100-48 (citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)). Applicants respectfully submit that no such basis in fact or technical reasoning has been provided to support this rejection.

For at least the reasons presented above, Applicants respectfully submit that claims 27-32, 34-42, 44-47, 49, and 50 are patentable over Lübeck. Reconsideration and withdrawal of this rejection as applied to claims 27-32, 34-42, 44-47, 49, and 50 are, therefore, respectfully requested.

The 35 U.S.C. §103 Rejection

Claims 16, 33, and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lübeck (German Patent No. 1,213,249) in view of Japuntich et al. (U.S. Patent No. 5,509,436).

Applicants respectfully traverse this rejection as applied to claims 33 and 43 (noting that claim 16 has been canceled without prejudice, thereby rendering the rejection moot with respect to claim 16).

"To establish a *prima facie* case of obviousness . . . the prior art references (or references combined) must teach or suggest all the claim limitations." M.P.E.P. § 2143.

As discussed above with respect to the anticipation rejection, at least one feature recited in both of independent claims 28 and 38 is not found in Lübeck. Therefore, Lübeck does not teach or suggest all the claim limitations of dependent claims 33 and 43, which directly depend on independent claim 28 or 38. Further, nothing is identified within Japuntich et al. that remedies the deficiencies of Lübeck to support a *prima facie* case of obviousness.

For at least the reasons presented above, Applicants respectfully submit that claims 33 and 43 are patentable over Lübeck in view of Japuntich et al. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

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Summary

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

Mueting, Raasch & Gebhardt, P.A.

P.O. Box 581415

Minneapolis, MN 55458-1415

Phone: (612) 305-1220

Facsimile: (612) 305-1228

Customer Number 26813

31 OCTOBER 2007

Date

By: 

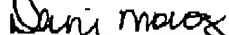
Kevin W. Raasch

Reg. No. 35,651

Direct Dial (612) 305-1218

CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 31st day of October, 2007, at 3:15 pm (Central Time).

By: Name: Dani Mones